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March 17, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket No. 96-45, and CC Docket No. 97-21 Requests for Review by
MasterMind Internet Services, Inc. of Decisions of the Administrator

Dear Ms. Roman Salas:

The Universal Service Administrative Company ("USAC") serves as the administrator for the Universal Service Support Mechanism for Schools and Libraries. In that capacity, USAC's Schools and Libraries Division ("SLD") is required to post requests for services contained in FCC Forms 470 on its web site and must ensure compliance with the competitive bidding requirements of the program. Further, SLD must approve, reject or modify requests for funding contained in FCC Forms 471 submitted by eligible schools and libraries. USAC, in its capacity as administrator of the Schools and Libraries Universal Service Support Mechanism, submits the following information concerning the administrator's handling of the above-referenced decisions denying certain funding requests associated with MasterMind Internet Services, Inc. ("MasterMind").

Under the Universal Service Support Mechanism for Schools and Libraries, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, and internal connections.¹ In the *Universal Service Order*, the Commission determined that competitive bidding is the most efficient means for ensuring that eligible schools and libraries are informed of the choices available to them and receive the lowest

¹ 47 C.F.R. §§ 54.502, 54.503.

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prices.² Thus, the Commission's rules require eligible schools and libraries to seek competitive bids for all services eligible for discounts.³ To comply with the competitive bidding requirement, the Commission's rules require that an applicant submit to SLD a completed FCC Form 470, in which the applicant sets forth its technological needs and lists the services for which it seeks discounts.⁴ The Form 470 is the first FCC form an applicant must complete in order to receive discounted services. SLD must post the FCC Form 470 to its web site, where it can be considered by all potential service providers.⁵ The applicant then must wait 28 days and "carefully consider all bids submitted" before selecting a service provider, subject to any state or local procurement rules.⁶ The mandatory bidding period triggered by the posting of the Form 470 is intended to benefit both vendors and applicants—vendors should have greater access to potential customers, and applicants should gain greater choice in vendor selection.⁷

MasterMind was involved with numerous FCC Forms 470 on behalf of Oklahoma schools and school districts for Funding Year 2 (which covers the period July 1, 1999 to June 30, 2000) of the Schools and Libraries Program. Subsequently, MasterMind was also involved with FCC Forms 471 on behalf of these same Oklahoma schools and school districts. The Form 471 lists the services for which the school is requesting program discounts, the entities that are eligible to receive these services, and establishes the discount rate for these services. SLD denied all funding requests (which are set forth in individual Funding Request Numbers, or "FRNs") which were presented on FCC Forms 471 signed by an employee or representative of MasterMind, where a MasterMind representative also signed the underlying Form 470 and where MasterMind was also listed as one of the service providers on the FCC Form 471 request for funding. SLD's stated reason for denial was that "[t]he circumstances surrounding the filing of the form 470 associated with this funding request violated the intent of the bidding process." MasterMind appealed SLD's denial of certain applications by Oklahoma schools who had contracts with MasterMind. This letter provides additional information concerning these denials.⁸

The circumstances leading to these denials can be summarized as follows. MasterMind supplied the request for proposals used by many of the schools. This compromises the competitive bidding process because it gives the appearance that MasterMind had a pre-existing relationship with the

² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, reversed in part, and remanded in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), petitions for cert. pending.

³ 47 C.F.R. § 54.504.

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(b)(3).

⁶ 47 C.F.R. §§ 54.504(b)(3), (b)(4); 54.511(a).

⁷ See Request for Review of the Decision of the Universal Service Administrator by Copan Public Schools, Copan Oklahoma, File No. SLD-26231, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order at ¶ 2 (rel. March 16, 2000).

⁸ Consistent with SLD policy not to reveal detailed applicant information where funding has been denied without the consent of the applicant, this letter does not identify any of the denied applicants.

applicants. Such appearance compromises the open and fair nature of the competitive bidding process. Moreover, MasterMind, as the signer of some of the Forms 470, received the bids from other vendors. This violates competitive bidding principles because some vendors may alter their bids or refrain from bidding at all if they have reservations about submitting their bids (which usually contain proprietary pricing information) to a competitor (or even a vendor in a different line of business). Again, this compromises the competitive bidding process. Third, MasterMind provided identical requests for proposals and other solicitation documents to the schools, which were flawed on their face. This lack of specificity did not allow potential bidders to understand exactly what services a particular school would require. Such ambiguity in the proposals also undermines the competitive bidding process. This, as well as other deficiencies, such as lack of a required response date or sufficient indication about who was requesting the services, resulted in a flawed solicitation document.

SLD's conclusion that the circumstances surrounding these funding requests associated with MasterMind violated the competitive bidding requirements of the program was based on an extensive investigation by SLD Program Integrity Assurance ("PIA") staff. PIA staff reviewed over 90 FCC Forms 471 for schools and school districts in Oklahoma which were signed by Mr. Chris Webber on behalf of MasterMind. In the course of SLD's initial review of these funding requests, PIA staff concluded that these applications all raised serious questions about compliance with program rules. In accordance with established SLD procedures, PIA reviewers contacted all 90 schools and requested documentation of the competitive bidding process surrounding the requests for funding. In response, numerous schools submitted packets of information that included letters, requests for proposals and contracts.

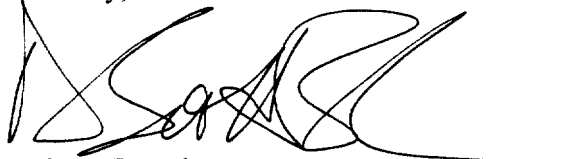
This information provided by the schools raised even more questions about the integrity of the competitive bidding and funding request process. Documentation received from schools in response to SLD's request included numerous identical form letters prepared by MasterMind that, among other things, contained identical typographical errors. MasterMind, the service provider, prepared an identical request for proposals for each of the schools. These identical requests for proposals contained no bid close date, no reply by date, and did not indicate the entity requesting the services. In response to additional inquiries by SLD staff, MasterMind faxed a packet of information to PIA review manager on October 7, 1999. The information shows that Mr. Webber (representing MasterMind, the ultimate provider of services) received requests for bids from a number of service providers on behalf of several schools. The facts strongly suggest, therefore, that MasterMind was both a bidder and the evaluator of bids—a clearly untenable position in a program which requires open and competitive bidding. *See* 47 CFR 54.504. The record also contained what appear to be e-mails from Mr. Webber to Nextel Communications and to American Telephone Company that did not include the requests for proposal. This raised the question whether all potential bidders were furnished with the same information. These and other discrepancies in the information that was provided to potential bidders by MasterMind, acting as the applicant's solicitor and receiver of bids, cast further doubt on the integrity of the competitive process. The information packet also does not show that MasterMind, the service provider listed on the FCC Form 471, responded to the Form 470 posting, which appears to be another violation of the competitive bidding process required by the regulations governing the Schools and Libraries Program. *See* 47 CFR 54.504.

The facts also suggest that valid written contracts might not have been entered into until after PIA staff requested evidence that a competitive bidding process had occurred. MasterMind apparently asked applicants to sign undated documents as late as October 1999, which would give the impression of a contract dating back to April 1999. One example of discrepancies between the bidding process and the services listed on the Form 471 is that the request for proposals seeks specific brand name items and indicates that "substitute equipment will not be accepted." However, the background documentation of the contract with MasterMind shows equipment different from the specifications. The lack of clarity and specificity in the request for proposals made it difficult for other bidders to know exactly what was being asked of them. Similarly, the *ex post facto* switch in specified equipment, contrary to the provision in the request for proposals barring substitutions, compromised the ability of other bidders to respond in a fair and equal fashion.

USAC is charged with taking appropriate administrative action to prevent waste, fraud and abuse in the Universal Service Support Mechanism for Schools and Libraries. *See* 47 CFR 54.702. Maintaining program integrity is our paramount goal. In SLD's judgment, the facts as briefly summarized above cast grave doubt on the fairness and openness of the competitive bidding process required by program rules. The host of irregularities uncovered by SLD in the competitive bidding process presented a difficult question of program integrity. Ultimately, SLD concluded that the competitive bidding process required by law had been so thoroughly undermined that the Year 2 funding requests at issue, *i.e.*, those requests where MasterMind was involved both as a service provider and as a solicitor of proposals, must be denied.

We appreciate the opportunity to supplement the record in this matter. We would be happy to provide any additional information you may require.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Scott Barash', with a long horizontal line extending to the right.

D. Scott Barash
Vice President and General Counsel

cc: Chris Webber, MasterMind
James P. Young, Esq. (counsel for MasterMind)
Marc Edwards, Esq. (counsel for MasterMind)
Irene Flannery, FCC
Sharon Webber, FCC
Dorothy Attwood, FCC
Jordan Goldstein, FCC
Kyle Dixon, FCC
Rebecca Beynon, FCC
Sarah Whitesell, FCC